

General Information Letter Prior to 2006, no credit is allowed for taxes paid to another state on compensation "paid in this State."

November 15, 2006

Dear:

This is in response to your letter dated October 21, 2006, to Annie Braido of the Illinois Department of Revenue, which has been forwarded to me for consideration. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

In your letter you have stated the following:

Thank you for your letter of 13 October 2006 and enclosures, the contents of which I note. However, this would seem to be contrary to the information contained at the start of IITA Section 601(b)(3), paraphrased in Section 100.2197. What this says is as below:

IITA Section 601(b)(3) provides that the aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to tax imposed by Section 201(a) and (b) of the Illinois Income Tax Act shall be credited against the tax imposed by Section 201(a) and (b) otherwise due under the Illinois Income Tax Act for such taxable year.

Clearly the above statement indicates that the Taxpayer is entitled to relief in Illinois on taxes paid to New York State in respect of his workdays in New York State.

Whilst we agree with you that were the Taxpayer a Non-resident of Illinois, we would not be due any relief from Illinois tax on work performed within the state of Illinois and taxed elsewhere, this is not the case here. The situation here is that a Resident of Illinois is paid by a New York employer for work performed in New York, upon which New York State taxes are withheld. We see no reason why Section 601(b)(3) should not apply to the Taxpayer and why he should not be given credit for taxes paid to New York State.

Response

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601), as in effect for 2004, provided:

The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under

this Act for such taxable year. The aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year. For purposes of this subsection, no compensation received by a resident which qualifies as compensation paid in this State as determined under Section 304(a)(2)(B) shall be considered income subject to tax by another state or states. (emphasis added)

Section 304(a)(2)(B) of the Illinois Income Tax Act (35 ILCS 5/304) provides:

Compensation is paid in this State if:

- (i) The individual's service is performed entirely within this State;
- (ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or
- (iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

As explained in the letter written by Annie Braido to you, dated October 13, 2006, the W-2 that was attached to the Zs' 2004 Illinois income tax return indicates that Mr. Z's compensation was "paid in this State" within the meaning of Section 304(a)(2)(B), and that such income is therefore treated as not subject to tax by any other state for purposes of computing the credit allowed under Section 601(b)(3). See also 86 Ill. Admin. Code Section 100.2197(b)(2)(E). Without evidence showing that the compensation was not "paid in this State," no credit can be allowed for taxes paid to New York on that compensation.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax

